

Jeffrey B. Cereghino, SBN 099480
 Email: jbc@rocklawcal.com
 Michael F. Ram, SBN 104805
 Email: mram@rocklawcal.com
 Susan Brown, SBN 287986
 Email: sbrown@rocklawcal.com
 Matt Malone, SBN 221545
 Email: mjm@rocklawcal.com
 RAM, OLSON, CEREGHINO
 & KOPCZYNSKI LLP
 555 Montgomery Street, Suite 820
 San Francisco, California 94111
 Telephone: (415) 433-4949
 Facsimile: (415) 433-7311

Beth E. Terrell, CSB 178181
 Email: bterrell@tmdwlaw.com
 Mary B. Reiten, CSB 203142
 Email: mreiten@tmdwlaw.com
 TERRELL MARSHALL DAUDT
 & WILLIE PLLC
 936 North 34th Street, Suite 300
 Seattle, Washington 98103-8869
 Telephone: (206) 816-6603
 Facsimile: (206) 350-3528

Additional Counsel Listed on Signature Page

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANA GOLD, TAMMY EMERY, EDWIN
 MENDEZ and CHRISTOPHER MASSARO
 on behalf of themselves and all others
 similarly situated,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC., a Delaware
 corporation; and DOES1 through 200, inclusive,

Defendant.

Case No. 14-cv-05373

**FIRST AMENDED CLASS
 ACTION COMPLAINT**

CLASS ACTION

JURY TRIAL DEMAND

1 Through the undersigned counsel, Plaintiffs DANA GOLD, TAMMY EMERY,
 2 EDWIN MENDEZ and CHRISTOPHER MASSARO, on behalf of themselves and all others
 3 similarly situated (“Plaintiffs”), file this class action complaint against Defendant Lumber
 4 Liquidators, Inc. (“Defendant”) On personal knowledge of their own circumstances and upon
 5 investigation and information and belief of their counsel, Plaintiffs aver the following.

6 **INTRODUCTION**

7 1. Defendant manufactures, advertises, sells and distributes bamboo flooring under
 8 the brand name Morning Star Bamboo Flooring (the “Product”) throughout the United States
 9 for installation in homes and other structures.

10 2. Defendant markets and warrants that the Product is durable, and further markets
 11 and warrants that the Product has a thirty (30) year warranty. Defendant provided a reasonable
 12 expectation to consumers and the industry that the Product would have a usable lifetime of at
 13 least thirty (30) years.

14 3. Contrary to Defendant’s advertising, which it widely distributes to building
 15 professionals and to the general public, the Product is not “free of defects,” “extremely
 16 durable,” or “exceptionally durable to withstand the rigors of daily life,” but rather is subject to
 17 premature cracking, splitting, warping and shrinking, all well before the warranted useful life.

18 4. The Product’s various modes of failure potentially cause damage to other
 19 building components and render the Product susceptible to premature failure.

20 5. Plaintiffs bring this action to seek redress for damages caused by Defendant’s
 21 wrongful conduct.

22 **JURISDICTION**

23 6. This Court has jurisdiction over this case under 28 U.S.C. 1332(d)(2) in that: (1)
 24 this action is a class action with more than one hundred (100) Class Members; (2) Defendant
 25 LUMBER LIQUIDATORS, Inc. (“Lumber Liquidators”) is a corporation, based in the State of
 26 Virginia and is a citizen of the State of Delaware; (3) Plaintiffs and all Members of the Class
 27

1 are United States citizens; and (4) the matter in controversy exceeds the sum or value of
2 \$5,000,000, exclusive of interest and costs.

3 VENUE

4 7. Venue in this Court is proper: (1) pursuant to 28 U.S.C. 1391(a)(1) in that
5 defendant Lumber Liquidators does sufficient business in this District to subject it to personal
6 jurisdiction herein; and (2) pursuant to 28 U.S.C. 1391(a)(2) in that a substantial part of the
7 events or omissions giving rise to the claim occurred in this District.

8 INTRADISTRICT VENUE

9 8. Venue in this Division of the Northern District is proper because a substantial
10 part of the events or omissions which give rise to the claim occurred in Contra Costa County.

11 PARTIES

12 9. Plaintiff DANA GOLD is a California resident and owns a home located at 1192
13 Bacon Way in Lafayette, California.

14 10. Plaintiff TAMMY EMERY is a West Virginia resident and owns a home located
15 at 219 Picket Avenue, Inwood, West Virginia.

16 11. Plaintiff EDWIN MENDEZ is an Illinois resident and owns a home located at
17 2154 Kemmerer Lane, Bolingbrook, Illinois.

18 12. Plaintiff CHRISTOPHER MASSARO is a New York resident and owns a home
19 located at 205 Helen Street, Holbrook, New York.

20 13. Defendant LUMBER LIQUIDATORS, INC. is a corporation incorporated in the
21 State of Delaware and with its principal place of business in Toano, Virginia. Plaintiffs are
22 informed and believe that Lumber Liquidators conducts business within the United States, and
23 more specifically within the State of California. Also on information and belief, Plaintiffs
24 allege that Lumber Liquidators was responsible for, or otherwise involved in, the development,
25 manufacture, marketing, sales, warranting and distribution of Morning Star Bamboo Flooring
26 (referred to herein as the "Product").
27

1 14. Plaintiffs are ignorant of the true names and capacities of Defendants sued
 2 herein as Does 1 through 100, inclusive, (“Doe Defendants”) and therefore sues these Doe
 3 Defendants by fictitious names. Plaintiffs will amend this complaint to allege the true names
 4 and capacities of these fictitiously-named Doe Defendants when they are ascertained. Each of
 5 the fictitiously-named Doe Defendants is responsible for the conduct alleged in this complaint
 6 and Plaintiffs’ damages were actually and proximately caused by the conduct of the fictitiously
 7 named Doe Defendants.

8 15. Plaintiffs are informed and believe, and on that basis allege, that each of these
 9 Doe Defendants was the agent, joint venture and/or employee of Defendant and/or the Doe
 10 Defendants, and in doing the things hereinafter alleged, were acting within the course and
 11 scope of the agency, joint venture and employment with the advance knowledge, acquiescence
 12 or subsequent ratification of Defendant and each and every other Doe Defendant.

13 **FACTUAL ALLEGATIONS**

14 **A. Plaintiff Gold’s Factual Allegations**

15 16. Plaintiff DANA GOLD is a California resident and owns a home located at 1192
 16 Bacon Way, Lafayette, California. In early October 2013, Gold used the services of a licensed
 17 flooring contractor to install the Product in her home. Within weeks of installation, while the
 18 home remained unoccupied, Gold observed initial defects with the Product. She observed the
 19 product was scratching easily and splintering. She notified Lumber Liquidators by phone on
 20 October 30, 2013. The customer service representative requested she complete a “General
 21 Disclosure Statement” to begin the claims process. Gold completed the General Disclosure
 22 Statement, and mailed it to Lumber Liquidators’ claims department. On or about December 2,
 23 2013, Richard King of Inspect Solutions, a company retained by Lumber Liquidators, inspected
 24 the Product installed at Gold’s home. He drafted a report on or about December 6, 2013, in
 25 which he concluded Gold and the installers were completely at fault and no Product defects
 26 existed.
 27

1 17. The Product continues to manifest defects to the present day, including warping,
2 splitting, buckling and shrinking. On September 4, 2014, Gold placed Defendant on notice of
3 these defects via a Consumers Legal Remedies Act notice (Cal. Civil Code §1782), attached as
4 Exhibit A hereto.

5 **B. Plaintiff Emery's Factual Allegations**

6 18. Plaintiff TAMMY EMERY is a West Virginia resident and owns a home located
7 at 219 Picket Avenue, Inwood, West Virginia.

8 19. On July 10, 2014, Emery purchased 517 square feet of the Product from Lumber
9 Liquidators. On August 4, 2014, the Product was installed in her living and dining rooms and
10 two hallways. The installation was conducted by Falling Water Floor, who was referred to
11 Emery by Lumber Liquidators. The cost of the installation was \$4,794.59.

12 20. Emery purchased her Product from her local Martinsburg Lumber Liquidators
13 after reviewing samples of the flooring at the store and being told by a Lumber Liquidator
14 Manager (Mr. William S. Dyess) that it was durable, the best product available, and sold with
15 30 year warranty.

16 21. Within only a few weeks after installation, Emery noticed that the Product was
17 delaminating, warping, splitting, shrinking and scratching and generally deteriorating in various
18 places.

19 22. On four occasions, Falling Water Floor Installation had to make repairs to
20 Emery's floor.

21 23. On December 15, 2014, Emery contacted Lumber Liquidators to put them on
22 notice that her floor was failing and that Falling Water Floor's repair efforts were futile.
23 Instead of immediately taking reasonable steps to replace Emery's flooring, in a letter
24 presumably incorrectly dated "January 5, 2015," Lumber Liquidators' Customer Care Team
25 stated that they "assigned her claim to James L."

26 24. The Product continues to manifest defects to the present day.
27

1 **C. Plaintiff Mendez’s Factual Allegations**

2 25. Plaintiff EDWIN MENDEZ is an Illinois resident and owns a home located at
3 2154 Kemmerer Lane, Bolingbrook, Illinois.

4 26. Between August 9 and September 18, 2014, Mendez purchased approximately
5 1,434 square feet of the Product from the Lumber Liquidators store located in Bolingbrook,
6 Illinois (Store 1086).

7 27. Mendez purchased the flooring after finding and viewing samples of the product
8 at the Lumber Liquidators’ store and reviewing materials online.

9 28. Installation was conducted by GS Home Remodels and was completed around
10 mid-October, 2014. Mendez spent approximately \$9,117 — \$3,022.50 for labor, \$5,634.34 for
11 materials and other installation supplies from Lumber Liquidators, and around \$460 for
12 replacement of trim that had to be removed for the new floor to be installed.

13 29. In addition to becoming sick from the smells associated with his new flooring,
14 in or around September 2014, while installation of the floor was ongoing, Mendez noticed that
15 the glue sold to him by Lumber Liquidators provided little if any adhesion between the flooring
16 and subfloor. Mendez notified Lumber Liquidators of this issue and, and at the request of the
17 Defendant’s “Customer Care Team,” submitted a General Disclosure Statement. In response,
18 as communicated by Customer Relations Specialist “Maggie T.,” Lumber Liquidators denied
19 all responsibility for this issue, attributing the problems to insufficient adhesive coverage.
20 After continuing to complain about the glue issue, Defendant offered \$500 to resolve the
21 specific issue. Mendez signed a release related to only the glue issue on October 8, 2014.

22 30. Soon after he resolved the glue issue, Mendez began to notice that the flooring
23 was buckling and shrinking in several areas.

24 31. The Product continues to manifest defects to the present day.

25 **D. Plaintiff Massaro’s Factual Allegations**

26 32. Plaintiff CHRISTOPHER MASSARO is a New York Resident and owns a
27

1 home located at 205 Helen Street, Holbrook, New York.

2 33. On October 17, 2013, Massaro purchased 796 square feet of the Product from
3 Lumber Liquidators. The product was installed by in his living room, kitchen, den and
4 hallway. The installation was conducted by Mt. Sinai Cabinet Co. The cost of the installation
5 was \$4,689.

6 34. Massaro purchased his Product from his local Lumber Liquidators after
7 reviewing samples of the flooring at the store and being told by a Lumber Liquidators'
8 salesperson that the floor was "harder than hardwood" and long lasting.

9 35. Upon installation, Massaro noticed that the Product was cracking, delaminating,
10 gapping, and scratching in various places.

11 36. As a result of the problems with his Product, on March 2, 2014, Massaro
12 notified Lumber Liquidators and completed a General Disclosure Statement. The Statement
13 was submitted to "Maggie T." In addition, he filed a formal complaint with the Better Business
14 Bureau.

15 37. On March 13, 2014, Defendant ("Maggie T.") sent Massaro a letter stating that
16 according to the company's "investigation," which apparently was conducted only on the basis
17 of Massaro's completed General Disclosure Statement, the Product's various defects were all
18 due to installation failures and that the complaint did not amount to "a warrantable claim."

19 38. The Product continues to manifest defects to the present day.

20 **E. Product Manufacturing Process and Representations**

21 39. The Product is made by slicing mature bamboo into strips, cutting the strips into
22 desired widths, immersing the strips in an acid solution to eliminate sugars and starch, (in some
23 cases) staining the material, binding it together into planks using an adhesive, and finally
24 applying a curing lacquer. Plaintiffs are informed and believe that Lumber Liquidators has
25 been manufacturing and selling the Product since approximately 2008. Lumber Liquidators has
26 sold the Product to thousands of consumers throughout the United States, including California.
27

1 The Product was and is marketed and sold for use in homes and other structures.

2 40. Defendant concealed from and/or failed to disclose to Plaintiffs and the Class
3 the defective nature of the Product.

4 41. Plaintiffs are informed and believe that Defendant used a variety of methods to
5 communicate representations about the durability and quality of the Product and about its
6 warranty to the general public and contractors in the flooring installation business. These
7 representations were published on Internet sites such as YouTube, on the Lumber Liquidators
8 website, at trade, building and home shows typically open to the general public and contractors
9 who service ultimate consumers of the Product, and at Lumber Liquidators product retail
10 stores. Defendant communicated a common and repeated theme regarding the Product:

- 11 • “They’re finely crafted to ensure they’re free of defects.”
- 12 • “Each Morning Star floor is manufactured to be exceptionally durable so
13 it withstands the rigors of everyday life.”
- 14 • Morning Star Bamboo is two- to two-and-a-half times harder than red
15 oak, so it holds up well to “pretty much anything you can put it through.”
- 16 • “To make strand bamboo, shredded bamboo fibers are compressed under
17 extreme heat and pressure. This manufacturing process yields flooring
18 that is even harder and more dense than traditional bamboo floors.”
- 19 • “Morning Star Bamboo Flooring is one of the best bamboo floors on the
20 market today. It is produced from old growth bamboo reeds that are at
21 least 4 years old, thereby increasing hardness. Morning Star Bamboo
22 Flooring creates a naturally beautiful and ecologically friendly product
23 that evokes a feeling of luxury.”

24 42. Defendant states that its flooring meets accepted industry standards, stating on
25 its website: “QUALITY GUARANTEE: This Flooring is constructed and tested to meet or
26 exceed industry standards for emissions” -- including ASTM 4066 (wear resistance), ASTM
27 3359 (Finish Adhesion) and ASTM 4442 (Moisture Content). *See*

http://www.lumberliquidators.com/assets/images/product_page/Morning_Star_10023638_HS

1 [Str_Antique.pdf](#) (citing various “Technical Specifications”).

2 43. These representations and warranties are not true. Defendant knew that their
3 Product did not conform to these representations.

4 44. Defendant continues to advertised and sell the Product for use in homes and
5 other buildings, omitting to disclose to Plaintiffs and the Class, their agents, or contractors
6 material facts concerning the Product, including but not limited to concealing that the Product
7 was defectively formulated, was susceptible to warping, splitting, shrinking and splintering,
8 would otherwise not perform as represented, and would fail before its thirty year warranted
9 life. All of these facts would be material to a reasonable consumer. The Product did not
10 perform in accordance with the reasonable expectations of Plaintiffs and the Class that it was
11 durable and suitable for use as a flooring system in their homes and other structures.

12 45. The Product is a manufactured wood product that is defectively designed, tested,
13 and manufactured, and will warp, buckle, splinter and unreasonably scratch and dent when
14 used in its intended manner. This failure is common in the Product, regardless of when, where
15 or how it is installed.

16 46. As a result of Defendant’s misconduct, Plaintiffs and the Class have suffered
17 actual damages in that the flooring in their homes and other structures has prematurely failed
18 and will continue to do so, potentially damaging to other building elements, causing
19 continuous and progressive damage to property, and requiring them to expend thousands of
20 dollars to repair or replace the flooring long before the expiration of the “useful life” of the
21 Product as represented by Defendant.

22 47. Due to the defective nature of the Product, it is not sufficiently durable to serve
23 as flooring. The following photographs depict some of the problems Plaintiffs and others have
24 experienced with the Product.
25
26
27



48. Because of the relatively small size of the typical damages, and the modest resources of most homeowners and of the individual Members of the Class, it is unlikely that most Class Members could afford to seek recovery against Defendant on their own. A class action is therefore the only viable, economical and rational means for Members of the Class to recover from Defendant for the damages they have caused.

F. Defendant's Warranty Practices and Procedures

The following excerpts are sample internet comments from some of the thousands of customers who describe the illusory and deceptive warranty practices employed by Defendant to avoid legitimate warranty claims, and distract and divert its customers from pursuing their

legitimate claims:

1. "I purchased \$6000 of morningstar bamboo from Lumber Liquidators in Jan 2012 and \$3000 more in adjacent room on same floor in April 2012. Approximately 6 months after installation the \$6000 floor began to show gaps and shrinkage. The 2nd installation has been trouble free. I contacted the LL store and they said not our problem. Contacted LL customer service and they told me it was my fault due to humidity levels in my home. If that were the case the \$3000 floor would also show gaps and shrinkage since they are next to each other! Their salesman never mentioned any problem with this wood and humidity. Salesman said the wood was "tougher than oak". What a lie! It scratches plenty! They offered \$200 on a \$1000 repair contingent on me waving any future claims. What a joke!"
2. "Can someone please tell me if there is a group from here in Texas that is getting together to bring a class action against LL? We purchased 1200 sq. ft. of Morning Star Bamboo Flooring in November and it is cupping EVERYWHERE. We came home from being gone over the weekend and now it is actually buckling up. From EVERYTHING I have read, it is defective product we were sold and do NOT expect to get any help from LL. As of now, they have been completely useless in taking care of my problem floor. I WILL continue to go through the motions to hopefully get my money for the flooring refunded and the cost to have it pulled up reimbursed!!! I do NOT want this junk in my home. If anyone has information, please forward it to me. When you hire a lawyer for something like this, does LL have to pay the attorney or do you have to? I do NOT have the money to hire and pay an attorney."
3. "Lost first level contents and flooring from Sandy. January 2013, made purchase of 800 sq ft of Morning Star Bamboo, \$3661.78. Had their installers, Palermo to home to inspect and recommend how and when to install (another \$1100). Had delivery, allowed floor to acclimate for specified 3-5 days. Their installers returned to install. By end of March, had some gaps. Called Lumber Liquidators, they called installers. Was assured that with full year of warranty for installation and product, allow it to go thru summer months. July noticed scratches. While scratches are normal, these were white, not the bamboo color. Made claim to LL, was told to mail balance of floor for inspection. They received, said floor not at fault, never returned floor. Dec 2013, gaps grew to over 1/2 inch, separation from walls. Called Lumber Liquidators. Made claim on Dec. 2, repeated claim on Dec 13, 2013. January 17th, began follow up and no one called us. Googled issue online. Found we were one of many. Inspections began from LL and their installers, Palermo. They agreed separation not normal - many homes in area with issue. Went to two of the LL stores. They agreed with issue and fault of floor and had numerous issues with customers and made changes to how they sell and allow acclimation of product. Three inspections were done, no issue at home cited. March inspection found moisture level now low in home. They are now blaming us. No one has record of 3 other inspections. Our gaps are

all thru home from the front door on. As large as 1 inch in some spots. Unsightly and embarrassing. We had none of these issues with our floor before Sandy in its 5 year life. It is not our home, it is the product. Lumber Liquidators knows it. Every salesperson you ask in their store in my NY area cautions the purchaser not to buy this product. I don't know if the product was too wet when manufactured, or too dry or from endangered Tiger habitat as stated online, but we are so frustrated and embarrassed by our home's floor every day."

4. "I bought 1000 square feet of Morning Star Bamboo from Lumber Liquidators in November 2011 after consulting with the sales associates in the Perrysburg, OH store. We received the product, allowed it to acclimate indoors for several weeks and then had it installed by the installer recommended by the company. About one month later, the floor began to gap, snap, crackle and pop all over the place. Our installer could not be reached for some time. I called the store that referred me to corporate. The proper warranty protocol was followed and several weeks later, nothing! The customer service rep is mysteriously gone and no one will help. Unreturned phone calls and emails continue. I need to list my home to sell in the next month, meanwhile my floor is disintegrating. "

CLASS ACTION ALLEGATIONS

49. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) and Rule 23 (b)(3) of the Federal Rules of Civil Procedure on behalf of herself and the class. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements as set forth in Rule 23 (a) and Rule 23 (b) (3).

50. Plaintiffs advance this action on behalf of the following classes and subclasses (together, the "Class"):

Nationwide Class:

All individuals in the United States who own homes or other structures where Morning Star Bamboo Flooring, manufactured and sold by Lumber Liquidators Inc., is installed, or who paid to replace Morning Star Bamboo flooring products, manufactured and sold by Lumber Liquidators due to Product performance. Excluded from the Class are Defendants, their legal representatives, assigns and successors and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and any member of the judge's immediate family and judicial staff.

California Sub-Class:

All individuals in the State of California who purchased, for personal, family or household use, Morning Star Bamboo Flooring

1 manufactured and sold by Lumber Liquidators, Inc. Products, or
2 homes in which Morning Star Bamboo Flooring manufactured and
3 sold by Lumber Liquidators Product were installed, or who paid to
4 replace Morning Star Flooring Product manufactured and sold by
5 Lumber Liquidators Inc. Excluded from the Class are Defendants,
6 their legal representatives, assigns and successors and any entity in
7 which Defendants have a controlling interest. Also excluded is the
8 judge to whom this case is assigned and any member of the judge's
9 immediate family and judicial staff.

10 New York Sub-Class:

11 All individuals in the State of New York who purchased, for
12 personal, family or household use, Morning Star Bamboo Flooring
13 manufactured and sold by Lumber Liquidators, Inc. Products, or
14 homes in which Morning Star Bamboo Flooring manufactured and
15 sold by Lumber Liquidators Product were installed, or who paid to
16 replace Morning Star Flooring Product manufactured and sold by
17 Lumber Liquidators Inc. Excluded from the Class are Defendants,
18 their legal representatives, assigns and successors and any entity in
19 which Defendants have a controlling interest. Also excluded is the
20 judge to whom this case is assigned and any member of the judge's
21 immediate family and judicial staff.

22 Illinois Sub-Class:

23 All individuals in the State of Illinois who purchased, for personal,
24 family or household use, Morning Star Bamboo Flooring
25 manufactured and sold by Lumber Liquidators, Inc. Products, or
26 homes in which Morning Star Bamboo Flooring manufactured and
27 sold by Lumber Liquidators Product were installed, or who paid to
replace Morning Star Flooring Product manufactured and sold by
Lumber Liquidators Inc. Excluded from the Class are Defendants,
their legal representatives, assigns and successors and any entity in
which Defendants have a controlling interest. Also excluded is the
judge to whom this case is assigned and any member of the judge's
immediate family and judicial staff.

West Virginia Sub-Class:

All individuals in the State of West Virginia who purchased, for
personal, family or household use, Morning Star Bamboo Flooring
manufactured and sold by Lumber Liquidators, Inc. Products, or
homes in which Morning Star Bamboo Flooring manufactured and
sold by Lumber Liquidators Product were installed, or who paid to
replace Morning Star Flooring Product manufactured and sold by
Lumber Liquidators Inc. Excluded from the Class are Defendants,
their legal representatives, assigns and successors and any entity in
which Defendants have a controlling interest. Also excluded is the
judge to whom this case is assigned and any member of the judge's
immediate family and judicial staff.

1 Claims for personal injury are specifically excluded from the Class.

2 51. Numerosity: (Rule 23 (a) (1)): Although the actual size of the Class is
 3 uncertain, Plaintiffs are informed and believes the Class is comprised of many of thousands of
 4 property owners throughout the United States, making joinder impractical. The disposition of
 5 the claims of these Class Members in a single class action will provide substantial benefits to
 6 all parties and to the Court.

7 52. Communality: (Rule 23 (a) (2)). There exist questions of law and fact common
 8 to all Members of the Class. Common questions include but are not limited to the following:

- 9 a. Whether the Product is subject to premature failure well in advance of its
 10 represented thirty-year useful life;
- 11 b. Whether the Product is not suitable for use as a long-term flooring product;
- 12 c. Whether Defendant knew, or should have known, of the defective nature of the
 13 Product before making available for purchase and use by the Plaintiffs and the Class;
- 14 d. Whether Defendant failed to disclose to Plaintiffs and the Class the defective
 15 nature of the Product;
- 16 e. Whether Defendant's failure to disclose material facts violated Business
 17 Professions Code Section 17200;
- 18 f. Whether Defendant's warranty practices, by repeatedly concealing the true
 19 nature of the defects in the Product through the use of diversionary tactics and false
 20 investigative reports, violated Business & Professions Code Section 17200;
- 21 g. Whether Defendant's failure to inform purchasers that the Product was
 22 susceptible to the failures alleged herein was a material omission, the nondisclosure of which
 23 was a deceptive sales practice under the consumer protection statutes of applicable state law;
- 24 h. Whether Defendant owed a duty to Plaintiffs and the Class to exercise
 25 reasonable and ordinary care in the testing, design, production, manufacturing, warranting and
 26 marketing of the Product;
- 27 i. Whether Defendant breached its duties to the Plaintiffs and the Class by

1 designing, manufacturing, producing, marketing, advertising, and selling defective flooring to
2 Plaintiffs and the Class;

3 j. Whether Defendant had a duty to Plaintiffs and the Class to disclose the true
4 nature of the Product;

5 k. Whether the facts not disclosed by Defendant to Plaintiffs and the Class are
6 material facts;

7 l. Whether Defendant knew, or should have known that the Product would
8 prematurely fail, is not suitable for use as flooring in residences or businesses system, and
9 otherwise is not as represented by Defendant;

10 m. Whether Defendant violated California's Consumers Legal Remedies Act,
11 (California Civil Code §1750 et seq.), when it concealed or failed to disclose the true nature of
12 its Product, and represented, through their advertising, warranties and other express
13 representations that the Product had characteristics that it did not actually have;

14 n. Whether, in committing the acts alleged herein, Defendant engaged in unfair
15 competition and in an unfair business practice or practices within the meaning of California
16 Business and Professions Code §17200;

17 o. Whether such acts or practices were illegal, unfair, or fraudulent within the
18 meaning of California Business and Professions Code § 17200;

19 p. Whether Plaintiffs and the Class are entitled to compensatory damages,
20 restitution, and the amounts thereof respectively;

21 q. Whether Defendant should be declared financially responsible for notifying all
22 Class Members of the defective Product and for the costs and expenses of repair and
23 replacement of all defective flooring materials and providing restitution of monies paid and
24 inadequate value given;

25 r. Whether Defendant should be ordered to disgorge, for the benefit of the Class,
26 all or part of their ill-gotten profits received from the sale of defective Product and/or to make
27

1 full restitution to Plaintiffs and the Class Members; and

2 s. Whether Defendant should be enjoined from continuing to market the Product,
3 as defined herein, utilizing misleading misrepresentations and omission of material facts.

4 53. Typicality: (Rule 23 (a)(3)) The claim of the representative Plaintiffs are
5 typical of the claims of the Class, in that the representative Plaintiffs, like all Class Members,
6 own a structure in which the defective Product was installed and failed prematurely. The
7 representative Plaintiffs, like all Class Members, have suffered a common injury: Plaintiffs
8 will incur the cost of repairing and/or replacing the defective Product in their homes and
9 repairing any resultant consequential damage to other building components. The factual basis
10 of Defendant's misconduct is common to all Class Members.

11 54. Adequacy (Rule 23 (a)(4)) Plaintiffs will fairly and adequately represent and
12 protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in
13 prosecuting consumer class actions, including actions involving defective building products,
14 failure to disclose material information regarding product performance, and violation of
15 consumer protection statutes. Plaintiffs and their counsel are committed to vigorously
16 prosecuting this action on behalf of the Class and have the financial resources to do so. Neither
17 Plaintiffs nor their counsel have any interests adverse to those of the Class.

18 55. Predominance of Common Questions, (Rule 23 (b)(3)) Common questions of
19 law and fact predominant over any questions involving individualized analysis. Fundamentally
20 there are no material questions of fact or law that are not common to the Class. Common issues
21 of fact include: All of the Class Members purchased the same Product. The performance of the
22 Product relative to its represented qualities is a common question, as is the Defendant's
23 knowledge regarding Product performance and Defendant's uniform omission to the Class of
24 these material facts. Common questions of law include whether Defendant's conduct violates
25 California's consumer protection statutes and other law and, the class Members' entitlement to
26 damages and remedies.

1 56. Superiority (Rule 23 (b)(3)) Plaintiffs and the Class Members have all suffered
 2 and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful
 3 conduct. A class action is superior to other available methods for the fair and efficient
 4 adjudication of the subject controversy. Because of the relatively small size of the individual
 5 Class Members' claims, most Class Members likely would find the cost of litigating their
 6 individual claims to be prohibitive, and will have no effective remedy at law. Thus, absent a
 7 class action, Class Members will continue to incur damages and Defendant's misconduct will
 8 proceed without remedy. The class treatment of common questions of law and fact is also
 9 superior to multiple individual actions or piecemeal litigation in that it conserves the resources
 10 of the courts and the litigants, and promotes consistency and efficiency of adjudication. There
 11 is no impediment to the management of this action because the virtual identity of the common
 12 questions of law and fact to all Class Members.

13 57. Injunctive Relief (Rule 23(b)(2)) The Defendant engaged and continue to engage
 14 in business practices which are unfair, unlawful and/or fraudulent in violation of California's
 15 Unfair Competition Law (Business & Professions Code sections 17200 et seq.) and the False
 16 Advertising Law (Business & Professions Code sections 17500 et seq.) by, among other things,
 17 advertising and representing the Product, at issue herein, has characteristics and benefits, such
 18 as a maintenance free system or longevity, that are not accurate.

19 58. Plaintiffs seek class-wide injunctive relief on grounds consistent with the
 20 standards articulated in Rule 23 (b)(2) that establish final injunctive relief as an appropriate
 21 class-wide remedy, in that Defendant continues to advertise the Product, and continues to omit
 22 to disclose material facts regarding the Product.

23 **ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

24 59. Defendant knew or reasonably should have known that the Product was
 25 defective before its sale. Defendant intentionally concealed material truths concerning the
 26 Product from the general public and the Members of the Class, while continuing to falsely
 27

1 represent that the Product is durable, long-lasting, and fit for its intended use.

2 60. Defendant affirmatively represented to the general public the Product carried a
3 thirty-year (30) warranty. Through these representations, Defendant created a reasonable
4 expectation among ordinary consumers and in the construction trades that the Product would
5 have a useful life of at least thirty (30) years.

6 61. Defendant's acts of fraudulent concealment also include but are not limited to,
7 using improper warranty tactics and commissioning sham inspections of Class Members'
8 flooring in response to complaints in order to mislead consumers as to the cause of the
9 Product's failures and the true nature of the Product defects.

10 62. Based upon Defendant's misrepresentations and concealment, Defendant is
11 equitably estopped from asserting a statute-of-limitations defense.

12 63. Alternatively, to the extent Defendant pursued a common policy of diverting
13 warranty claims or other consumer complaints about the Product through misleading and
14 erroneous investigation, or delaying tactics that induced Plaintiffs or the Class to not assert
15 their rights in a timely manner, Defendant is equitably estopped from asserting a statute-of-
16 limitations defense.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of Consumers Legal Remedies Act ("CLRA"))**

19 64. Plaintiffs hereby incorporate by reference the allegations contained in all
20 preceding paragraphs of this complaint.

21 65. Defendant and the Doe Defendants are persons as defined by California Civil
22 Code §1761(c).

23 66. Defendant engaged in unfair competition or unfair or deceptive acts or practices
24 in violation of California Civil Code §1770(a)(5) and (a)(7) when Defendant represented,
25 through its advertising and other express representations, that the Product had benefits or
26 characteristics that it did not actually have. Defendant further violated the CLRA when
27

1 Defendant falsely represented that the Product was of a particular standard or quality. Finally,
 2 Defendant violated the CLRA when they advertised the Product with the intent not to sell it as
 3 advertised.

4 67. Defendant's deceptive practices were specifically designed to induce Plaintiffs
 5 and Members of the Class to purchase the Product. Defendant engaged in marketing efforts as
 6 detailed in the general allegations, to reach Class Members, their agents, and/or third parties
 7 upon whom they relied and persuade them to purchase and install the Product manufactured by
 8 Defendant, or to purchase homes and other structures in which the defective Product
 9 manufactured by Defendant had been installed.

10 68. To this day, Defendant continues to engage in unlawful practices in violation of
 11 California Consumers Legal Remedies Act. Defendant continues to conceal the defective
 12 nature of the Product, and have omitted to disclose upon inquiry from Class Members the
 13 Product's defective propensities.

14 69. Plaintiffs served Defendant with notice of their violation of the Consumers
 15 Legal Remedies Act by serving notice on their General Counsel by certified mail to their
 16 corporate offices, on September 4, 2014. A copy of this notice is attached hereto as Exhibit A.

17 WHEREFORE, Plaintiffs on behalf of themselves and for all others similarly situated,
 18 demand a permanent injunction be issued against Defendant to refrain from continued
 19 advertising of the Product at issue herein that omits material facts about product performance,
 20 injunctive relief forcing Defendant to replace and repair all Product at issue herein for Class
 21 Members, consequential damages for Class Members who have replaced or will replace the
 22 Product at issue herein, plus costs and attorneys' fees pursuant to California Civil Code
 23 §1780(d).

24 **SECOND CAUSE OF ACTION**
 25 **(Violation of Unfair Competition Law- Unlawful Business Practice)**

26 70. Plaintiffs hereby incorporate by reference the allegations contained in all
 27 preceding paragraphs of this Complaint.

1 71. California Business and Professions Code §17200 et seq. prohibits acts of unfair
2 competition, which includes unlawful business practices.

3 72. Defendant engaged in unlawful business practices in that Defendant represented,
4 through its advertising, warranties and other express representations that the Product had
5 characteristics it did not actually have. Defendant violated §17200 when Defendant falsely
6 represented the Product was of a particular standard or quality, including representations that
7 the Product was “free of defects,” “exceptionally durable,” and “two to two and a half times
8 harder than red oak.” Defendant further violated the Unfair Competition Law when it
9 unlawfully tested, designed, manufactured, formulated, sold and introduced in the stream of
10 commerce for purchase by Plaintiffs, the Class and the general public, the defective Product.

11 73. Defendant’s deceptive practices constitute an unlawful business practice in that
12 the practices were specifically designed to induce Plaintiffs and the Class, and their agents or
13 third parties upon whom Plaintiffs and the Class relied to provide appropriate guidance
14 regarding suitable flooring products, to purchase on the Class’ behalf the Product and install the
15 Product, recommend the use of the Product, or to purchase homes and other structures in which
16 the Product has been installed.

17 74. To this day, Defendant has engaged and continues to engage in unlawful
18 business practices by concealing the defective nature of the Product and have knowingly
19 misrepresented to Class Members the Product possess qualities and characteristics it does not
20 have.

21 75. As a direct and proximate cause of Defendant’s unfair and unlawful methods of
22 competition and unfair, deceptive or unlawful acts or practices, Plaintiffs and the Class have
23 suffered actual damages in that they own homes and other structures on which defective
24 Product is or was installed. The Product will prematurely fail due to its poor design, poor
25 manufacture and unsuitability for its intended purpose which will require (or has already
26 required) Plaintiffs and the Class to incur costs to prematurely repair and/or replace their
27

1 floorings.

2 76. As a proximate result of their unlawful, unfair or fraudulent practices, Defendant
3 has been unjustly enriched and should be required to make restitution to the Plaintiffs and the
4 Class pursuant to §§17203 and 17204 of the California Business & Professions Code.

5 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
6 demand judgment against Defendant, and each of them, for restitution and/or disgorgement of
7 funds paid to Defendant by Plaintiffs and the Class to purchase the Product, or the value of the
8 product in their home or structure, or in the form of repair and/or replacement of the defective
9 Product on the Class Members' homes and other structures.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of Unfair Competition Law – Unfair Business Practice)**

12 77. Plaintiffs hereby incorporate by reference the allegations contained in all
13 preceding paragraphs of this complaint.

14 78. Defendant engaged in an unfair business practice by failing to disclose material
15 facts concerning the Product, and representing, through advertising, warranties and other
16 representations that the Product had particular qualities, including, that the Product was “free of
17 defects,” “exceptionally durable,” and “two to two and a half times harder than red oak,” all
18 qualities that were inconsistent with Defendant's knowledge of Product performance.

19 79. Defendant's “unfair” practices were designed to induce Plaintiffs and the Class,
20 or their agents, and/or third parties upon whom Plaintiffs and the Class relied to provide
21 appropriate flooring products, to purchase and install the Product, recommend the use of the
22 Product, or to purchase homes and other structures on which the Product has been installed.

23 80. To this day, Defendant has failed to disclose facts concerning the Product
24 performance, facts that would be and are material to the consumer or those third parties, such as
25 flooring contractors and general contractors, upon whom the consumer relies.

26 81. As a direct and proximate cause of Defendant's unfair methods of competition
27 and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages

1 in that they own homes and other structures in which defective Product is or was installed. The
2 Product will prematurely fail due to inadequate product testing, poor design and/or
3 manufacturing techniques, and poor installation guidelines, which will require Plaintiffs and the
4 Class to incur costs to prematurely repair and/or replace their flooring.

5 **FOURTH CAUSE OF ACTION**
6 **(Violation of New York General Business Law § 349)**

7 82. Plaintiffs hereby incorporate by reference the allegations contained in all
8 preceding paragraphs of this complaint.

9 83. Plaintiff Massaro is a “person” and “consumer” under New York General
10 Business Law § 349.

11 84. Defendant engaged in deceptive practices related to the sale of their Product,
12 including consciously failing to disclose material facts regarding the defective nature of the
13 Product to Plaintiffs and Members of the Class, and misrepresenting to Plaintiffs and the Class
14 Members the appearance durability characteristics of their Product.

15 85. Contrary to Defendant’s representations, the Product degrades far in advance of
16 its purported warranties.

17 86. The deceptive acts and practices engaged in by Defendant were consumer-
18 oriented.

19 87. Defendant knew that the Product was defectively developed, designed or
20 manufactured.

21 88. Defendant knew that the Product, at the time of leaving Defendant’s control,
22 contained defects because it cracked, suffered gapping, discolored, lost scratch- and stain-
23 resistance, and lost durability under normal conditions in which it was installed. At the time of
24 sale, the Product contained design and construction defects that resulted in deterioration. The
25 defects reduced the effectiveness and performance of the Product and rendered it unable to
26 perform the ordinary purposes for which it was used.
27

1 89. Defendant's unconscionable conduct alleged herein included the omission and
2 concealment of material facts and misrepresentations concerning its Product.

3 90. Defendant was in a superior position to know, and actually did know, the true
4 facts about the hidden defects of Product and the known chemical degradation it would suffer.

5 91. Defendant intended that Plaintiffs and Members of the Class would rely on the
6 acts of concealment, omissions, and misrepresentations regarding the nature of the Product, so
7 that Plaintiffs and Members of the Class would purchase the defective product. Had Defendant
8 disclosed all the material information regarding the Product to Plaintiffs and Members of the
9 Class, they would have considered that information material to their decision to purchase
10 Defendant's Product at the price charged.

11 92. These deceptive acts and practices were committed in conduct of business,
12 trade, commerce or the furnishing of a service in the state of New York. Defendant's conduct
13 was not a unique, one-time occurrence without possibility of replication or recurrence and
14 without implication for the broader consuming public. To the contrary, the deceptive conduct
15 set forth herein is part of a regular and recurring practice that impacts all of the Class Members.

16 93. Defendant acted willfully, knowingly, intentionally, unconscionably and with
17 reckless indifference when they committed these acts of deception.

18 94. As a direct and proximate cause of the violation of NY GBL § 349, described
19 above, Plaintiffs and Members of the Class have been injured in that they have purchased the
20 Product based on nondisclosure of material facts alleged above.

21 95. As a result of Defendant's practices in violation of NY GBL § 349, Plaintiffs
22 and the other Members of the Class suffered an ascertainable loss in the form of monies paid to
23 Defendant for Product that, contrary to Defendant's representations, prematurely failed.

24 96. Plaintiffs and Members of the Class are entitled to recover such damages and
25 appropriate penalties (including attorneys' fees, and costs of suit) permitted under the law.
26
27

FIFTH CAUSE OF ACTION**(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act)**

97. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

98. The conduct described in this Complaint constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the “CFA”), 815 Ill. Comp. Stat. 505/1 et seq, and substantially similar state consumer protection statutes.

99. Defendant engaged in unfair or deceptive practices in violation of Illinois’ Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. 505/1 et seq. (2008) (hereinafter, “CFA”) when it (1) represented that the Product was durable and free of defects and ASTM acceptable when, at best, it lacked credible evidence to support those claims, and, at worst, knew the Product would fail prematurely, was not suitable for use as flooring, and otherwise was not as warranted and represented by Defendant; (2) failed to disclose to, or concealed from, consumers, installers and distributors material facts about the defective nature of the Product; (3) failed to disclose its own knowledge of the defective nature of the Product; and (4) limited its warranty obligations in an unfair and unconscionable way in light of its failure to disclose the defective nature of the Product.

100. Defendant either knew or should have known its Product was defective, would fail prematurely and was not as warranted and represented by Defendant.

101. Defendant’s conduct and omissions described herein repeatedly occurred in Defendant’s trade or business and were capable of deceiving a substantial portion of the consuming public.

102. The facts concealed or not disclosed by Defendant are material facts in that Plaintiffs and any reasonable consumer would have considered those facts important in deciding whether to purchase the Product or purchase homes or structures with flooring applying the Product. Had Plaintiffs and the Class known the Product was defective (and did not meet ASTM or other flooring industry standards), they would not have purchased the

1 Product or they would have either negotiated additional warranty coverage, negotiated a lower
 2 price to reflect the risk or simply avoided the risk all together by purchasing different flooring
 3 products.

4 103. Defendant intended that Plaintiffs and the Class would rely on the deception by
 5 purchasing its Product, unaware of the undisclosed material facts. Defendant knew that
 6 Plaintiffs and the Class would rely on its product literature and advertisements, statements
 7 made by its salespeople and other representations. This conduct constitutes consumer fraud
 8 within the meaning of the various consumer protection statutes.

9 104. Defendant's unlawful conduct is continuing, with no indication that Defendant
 10 will cease.

11 105. As a direct and proximate result of the deceptive, misleading, unfair and
 12 unconscionable practices of the Defendant set forth above, Plaintiffs and Class Members are
 13 entitled to actual damages, compensatory damages, penalties, attorney's fees and costs as set
 14 forth in Section 10a of the CFA.

15 106. The Defendant's deceptive, misleading, unfair and unconscionable practices set
 16 forth above were done willfully, wantonly and maliciously entitling Plaintiffs and Class
 17 Members to an award of punitive damages.

18 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendant, and
 21 each of them, and in favor of Plaintiffs, and to award the following relief:

- 22 1. Certification of the proposed Class;
- 23 2. A declaration that Defendant is financially responsible for notifying all Class
 24 Members;
- 25 3. Injunctive relief requiring Defendant to replace and/or repair all Products
 26 installed in structures owned by the Class;
- 27

1 Cuneo Gilbert & LaDuca, LLP
2 8120 Woodmont Avenue, Suite 810
3 Bethesda, Maryland 20814
4 Telephone: (202) 789-3960

5 Jordan L. Chaikin
6 Parker Waichman LLP
7 27300 Riverview Center Boulevard, Suite 103
8 Bonita Springs, Florida 34134
9 Telephone: (239) 390-1000

10 Michael McShane
11 Audet & Partners, LLP
12 221 Main Street, Suite 1460
13 San Francisco, CA 94105
14 Telephone: (415) 568-2555

15 Erica C. Mirabella
16 132 Boylston Street, 5th Floor
17 Boston, MA 02116
18 Telephone: (617) 580-8270
19 Email: erica@mirabellallc.com

20 Robert Shelquist
21 Lockridge Grindal & Nauen
22 100 Washington Avenue South
23 Suite 2200
24 Minneapolis, MN 55401
25 Telephone: (612) 339-6900
26 Email: rkshelquist@locklaw.com

27 *Attorneys for Plaintiffs and Proposed Class*